

Appendix A

*prisons, the interim rate cap for all ICS calls is set at \$0.25/min during the first year of implementation. The rate cap for prepaid and debit calls shall be reduced to \$0.23/min beginning on the first anniversary of implementation and to \$0.21/min on the second anniversary of implementation. The rate cap for automated collect calls at prisons shall remain at \$0.25/min. The Commission seeks comments from interested parties on whether it should consider reducing the ICS rate caps to the third-year targeted level, on a case-by-case basis any time during the first and second year following implementation, should any ICS provider disproportionately reduce site commission payments to a confinement facility.*⁸³

- 6.24 The interim ICS rate caps include cost recovery for CVB. Nevertheless, the Commission finds that security biometrics is rapidly evolving and that there is a lack of consistency in security biometric features and functionality among providers. Therefore, the Commission considers it prudent to separate the security biometrics cost component for detailed and more frequent cost analysis when establishing final ICS rates. The Commission intends to define the specific security biometrics essential for providing inmate voice service as well as identify features and functionality not recoverable from ICS end users. Furthermore, the Commission shall verify which providers are not providing the essential requirements for security biometrics and shall reduce the rate caps for those providers accordingly. *The Commission revises its Order with respect to security biometrics to require each ICS provider to submit to the Commission, by no later than the implementation date for this Order, a list of the security biometric features provided at each Alabama confinement facility served along with a detailed description of the features and functionality associated therewith. Additionally, ICS providers shall identify the vendor source for each security biometric service or feature.*

6.25 Single Payment Services

The Order recommends elimination of text-connect service and setting the charge for

⁸³ Based on a comparison of average intrastate ICS usage revenues at the facility preceding and following implementation of the interim rate caps.

“Pay Now” calls at the approved ICS usage rate plus the approved payment processing fee.⁸⁴ In response, Securus challenges the Commission’s authority to regulate their Text2Connect service:

The Commission cannot prohibit "text-to-collect" call processing from intrastate ICS in Alabama because (a) the Commission does not have jurisdiction to regulate wireless telecommunication services pursuant to Alabama Code Section 40-21-120(2), and (b) the Commission cannot interfere with contract rates and charges imposed by third parties on Securus and other ICS providers for simply sending a call to the third party for processing the "text-to-collect" call.

As the Commission notes, "text-to-collect" is a call processing service wherein the wireless recipient of an attempted collect ICS call receives a message from a third-party service that identifies the calling party, i.e. inmate and correctional institution, and proposes to complete the call to the wireless recipient for a charge. The recipient is quoted the charge and required to positively accept "twice", i.e. double acceptance, before the call is completed to the called party.

The third party call processor offers this service pursuant to a contract that the third party processor maintains with wireless telecommunication service providers. The fee charged to the called party is established by the contract that the third party processor has entered with the wireless telecommunication service providers. In the event that the recipient of the ICS call proactively elects to accept the "text-to-collect" call, the fee for the "text-to-collect" service is billed on the ICS call recipient's wireless bill. Securus, like other ICS providers, simply allows the calls to be sent to the third party processor for processing. Because the fee charged to the called party is established by a national contract between the third party processor and the wireless telecommunication service providers, the fee is the same throughout the nation, regardless whether the call originated at an Alabama confinement facility or a facility in any other state.⁸⁵

6.26 The Commission is no way attempting to regulate wireless carriers or wireless service.

⁸⁴ Order, Section III B, page 11.

⁸⁵ Securus comments dated December 6, 2013, pp 2-3.

The charge assessed to the call recipient's wireless bill is not that of the wireless carrier nor does the call originate from a wireless phone. The call originates from an inmate, over a wireline phone, from a confinement facility served by Securus using regulated ICS. The charges assessed to the wireless recipient's wireless bill are those submitted to the wireless carrier by a third-party processor of Text2connect calls. The ICS provider, not the third-party processor, sets the call price and negotiates the percentage revenue retained by the third-party call processor for their services. The wireless carrier's fee for including the charge on their customer's billing statement is established under agreement with the third-party call processor. The arrangement is no different than an inmate collect call submitted by an ICS provider's third-party billing aggregator to a wireline carrier. The third-party billing aggregator pays a fee to the wireline carrier for billing on their customer's monthly statement. The Commission does not interject itself into the contractual arrangements between the third-party billing aggregator and the wireline carrier. Nevertheless, the Commission establishes the end user price for the collect inmate call charged to the wireline end user regardless of the circuitous billing arrangements selected by the ICS provider.

- 6.27 ICS provider, NCIC, which uses third-party provider Bill To Mobile for its text-connect offering and charges \$5.99 for the text-connect call, concurs with the Commission's assessment:

NCIC recommends that the Commission allow Text-to-Collect offering due to the proliferation of cellular users today. "Text Collect" type products should be permitted, but regulated since the call is not originated from a wireless phone, but instead from an inmate phone terminating to a mobile phone. Although these content providers are not actually providing the service, they do have control over the rates charged to the end user and should be able to charge the rates outlined by the PSC. NCIC is familiar with the service and is aware that IPS providers are able to determine the amount that is charged to the wireless customer. NCIC suggests Text-to-Collect be capped at \$5.99 per call.⁸⁶

⁸⁶ NCIC comments, dated December 2, 2013, page 2.

- 6.28 Securus provides its single pay services through 3CInteractive (“3CI”), a third-party call processor for billing services to mobile subscribers, including ICS calls based on its patented Text-CollectTM process. Securus charges \$9.99 for its branded “Text2Connect” call. Maximum call times are dictated by the corrections facility. The price for the call is the same regardless of the actual call duration. By comparison, NCIC, a relatively small provider offers its text-connect service for \$5.99 - 40% less than Securus.
- 6.29 Securus’ Pay NowTM is a similar service except that the call recipient may elect to bill the call to a debit/credit card. The charge is \$14.99 per call up to the maximum allowable call duration. With Pay Now, the calls originate from inmates using ICS and terminate not only to wireless but also wireline subscribers. Securus describes⁸⁷ how Pay Now works:

Pay NowTM is an Automated Operator Service (AOS) offering where the called party pays for each call using a major credit card. This AOS is offered exclusively by Securus Technologies, Inc.

The AOS will prompt the called party to pay with their credit card in order to connect to a friend or family member detained at a Securus-managed corrections facility. Prior to accepting the charge, the calling party's name and the name of the facility from where they are calling is announced to the called party via an Interactive Voice Response (IVR) system.

The called party will also be advised of the cost of the call and the maximum allotted call time.

NOTE: Shorter duration calls or disconnected calls will not be credited for any unused minutes.

The call time is a maximum set duration as dictated by the facility.⁸⁸

⁸⁷ The Commission notes that Securus’ description of Pay Now makes no mention of any attempt by Securus to steer Pay Now call recipients toward establishing a prepaid calling account.

⁸⁸ *How it Works*, Securus Pay NowTM website, URL: <http://www.1tel.com/how-it-works.php>.

- 6.30 The Pay Now call recipient's debit/credit card statement contains a URL to Securus' website for Pay Now:

1tel.com is a short web address, or domain name, that we use on your credit card statement. We use this domain to make it easier for you to contact us for any service need.⁸⁹

The "Terms and Conditions" page, Item 9, advises customers for the service to direct all notices to 3CI. However, the inmate collect call originates from a confinement facility in which Securus has the exclusive contract for providing ICS. Securus may only provide ICS under authority granted by the Commission through a CPCN. Therefore, Securus, rather than any unregulated intermediary, is responsible to the Commission for the price charged and for customer service inquiries associated with the call.

- 6.31 ICS Provider Compliance with Commission Telephone Rule T-15.1, Inmate Phone Service ("IPS"), is required. Securus and other ICS providers that fail to identify single payment services and the associated charges in their tariff are non-compliant with Commission rules.

All IPS providers must file tariffs with the Commission which set forth the services provided along with the charges and surcharges for those services. Tariffs shall also identify the billing and collection methods utilized by the IPS provider; such as LEC or direct billed collect, prepaid calling card, debit account, prepaid collect account and any other payment alternatives.⁹⁰

The operator service and per-minute rates charged the customer for any local (intraLATA/interLATA) collect call shall not exceed the currently effective caps ordered by the Commission. The customer shall not be billed by the IPS provider for any call related or non-call related charges, excluding applicable government taxes and fees, not specifically included in the tariff on file with the Commission. Further, the IPS provider will disclose in the tariff on file with the Commission the identity of all government taxes and

⁸⁹ See URL: <http://www.1tel.com/faq.php#4>.

⁹⁰ Commission Telephone Rule T-15.1(A)(2).

fees that may be assessed the customer.⁹¹

Any IPS provider wishing to increase rates which exceed the currently effective caps ordered by the Commission shall file a petition with cost justification to the Commission. No rate increases will be implemented without Commission approval.⁹²

Additionally, the Alabama Utility Gross Receipts Tax applies to all collect calls originating from Alabama confinement facilities. The Commission is unsure whether ICS providers of single payment services have historically remitted the applicable state taxes for single payment services and shall defer the determination to the ADOR for compliance verification.

- 6.32 Securus objects to any Commission attempt at regulating the price for Pay Now type services:

The Commission erroneously seeks to interfere with contractual relationships between Securus and other ICS providers and third party "pay now" call processors by capping the rates that Securus and other ICS providers may charge for "pay now" calls and lacks the jurisdiction to do so. As the Commission notes, "pay now" call processing is a call processing service wherein a collect call from a confinement facility is temporarily connected to a wireless or wireline recipient with the identification of the caller announced by the third-party call processor and the recipient afforded an opportunity to bill the flat rate cost of the call to the recipient's debit or credit card.

The charge imposed by the third-party call processor for the "pay now" call processing service is charged pursuant to a contract between the ICS provider like Securus and the third party call processor. The credit card processing system used by the third-party call process is only capable of imposing a flat fee for the "pay now" call processing service. The fee charged by the third-party call processor for the "pay now" call processing service is the same fee charged throughout the nation without regard to whether the confinement facility call originated in Alabama or any other state. Any attempt by the Commission to cap the fee that Securus or any other ICS provider can charge for offering "pay now" call

⁹¹ Ibid, T-15.1(B)(4).

⁹² Ibid, T-15.1(B)(5).

processing services (a) unreasonably interferes with the ICS providers' contracts with the third-party call processors and (b) restricts the ICS providers' ability to recover the costs incurred by the ICS provider in offering the "pay now" call processing services.⁹³

- 6.33 The Commission rejects the claim that it does not have the jurisdiction to set rates for collect calls. Securus does not dispute the Commission's authority to set ICS collect call rates provided Securus delivers the call. However, Securus advocates Commission surrender of its pricing jurisdiction whenever Securus chooses to convey the billing and delivery functions for ICS calls to a third-party over which the Commission has no regulatory jurisdiction. For the Commission to do so is tantamount to sanctioning an alternative to the Commission's ICS rate regulation, the consequences for which may be incentivizing providers to shift as many inmate collect calls as possible to the more lucrative unregulated price structure. Moreover, the Commission will have created both the precedent and the incentive for ICS providers to pursue third-party service arrangements for prepaid collect and debit ICS calls in order that they too may be shielded from regulation. The Commission asserts its jurisdiction over the charges for collect calls originating from Alabama confinement facilities regardless of any intermediaries the ICS provider chooses to include prior to call termination. Therefore, Securus and other providers may pursue alternatives for billing and delivery of those calls free from Commission interference with the "contractual relationships" associated therewith provided the charge to the end user complies with the Commission's maximum ICS rates.
- 6.34 Single pay services allow for de facto circumvention of the Commission's capped ICS rates. A Text2Collect call of 15-minutes maximum duration equates to an effective rate of \$0.67/min. Subtracting the \$3.00 maximum collect call bill processing fee recommended in the Order from the \$9.99 Text2Connect charge results in net usage of \$6.99 and an effective rate of \$0.47/min. The effective rate for a \$14.99 Securus Pay Now call is \$1.00/min. Subtracting the \$3.00 maximum debit/credit card processing fee

⁹³ Securus comments dated December 6, 2013, pp 3-4.

recommended in the Order from the \$14.99 Pay Now charge results in net usage of \$11.99 and an effective rate of \$0.80/min. The Securus website shows the \$14.99 Pay Now charge call fee is \$1.80⁹⁴ and the “transaction fee” is \$13.19⁹⁵. If the call is less than the authorized duration, the effective rates are even higher. With Pay Now collect calls, there is no premium text messaging involved and no fees paid to the wireline or wireless carrier for billing the charge using their customer’s account. Nevertheless, Securus charges \$9.99 for a Text2Collect call and \$14.99, or 50% more, for the same call using Pay Now.

- 6.35 Free from regulatory oversight, ICS providers could impose their will with respect to charges for single payment services. Additionally, the resulting disparity between capped prepaid call minutes and the much higher charges for single payment services provides no incentive for ICS providers to adequately inform call recipients about the provider’s lower cost prepaid service or about funding the inmate’s debit call account. Call recipients that visit the 1tel.com website for Pay Now referenced on their credit card statement will not find any mention of Securus’ lower priced prepaid calling service alternative. Instead, they are informed, via the frequently asked questions page, that Pay Now calls are limited to \$150 or 10 calls per month per customer. Furthermore, the Securus “Friends and Family” services webpage is not linked on the 1tel.com website.

6.36 Single Payment Services Offered by Other ICS Providers

GTL offers service using “collect2phoneTM”, which like Securus’ Text2Connect, is priced at \$9.99. GTL’s Pay Now clone is marketed as “Collect2CardTM” and, like Pay Now, is priced at \$14.99. The trademarks are registered to 3CI⁹⁶. Credit card charges on the statements of Collect2Card call recipients reference a 2fon.net website. GTL is not mentioned on the website nor is there a link to GTL’s “Friends and Family” webpage wherein the recipient may be informed about prepaid collect alternatives. Telmate’s text-

⁹⁴ The Commission suspects the call fee is set at \$1.80 because the lowest ICS local phone call rate is in North Carolina where the rate is \$1.71 for a 15-minute call, plus tax, for a total charge of \$1.80.

⁹⁵ Securus Pay NowTM charges are listed at URL <http://www.1tel.com/pricing.php>.

⁹⁶ URL: <http://www.trademark247.com/collect2phone-86054508-1.html>

connect offering is branded as Mobile PayTM and its service for billing collect calls to a credit card is branded as Quick ConnectTM. The Commission is unable to determine Telmate's end user charge for Mobile Pay and Quick Connect and the underlying third-party provider.

6.37 Commission Pricing for Single Payment Services

The Commission concedes that the nature of text-connect and Pay Now calls makes it impractical to charge for actual call duration. The intent is to inform the call recipient of the total charge up front before seeking customer approval for accepting the charge. Nevertheless, the Commission seeks to ensure that its ICS rate caps are not circumvented using single payment call services. NCIC charges \$5.99 per text-connect call and recommends that the Commission authorize ICS providers to provide the service at that rate.

- 6.38 Single payment call charges consist of a calling element and a transaction fee element. Absent specific cost justification to the contrary, the Commission contends the approved bill processing fee applicable to other ICS collect calls is applicable to text-connect service and the Commission approved credit card payment processing fee, is applicable to Pay Now type service. The Commission's proposed cap for both the bill processing fee⁹⁷ and payment processing fee is \$3.00 (see Section 8.00 in this Order) which when deducted from the \$5.99 charge proposed by NCIC (rounded to \$6.00), leaves \$3.00 applicable to the call usage element maximum charge. The Commission's proposed maximum collect call rate for prisons is \$0.25/min. The \$3.00 call usage rate element divided by \$0.25/min yields a 12-minute authorized call duration which the Commission imputes as the authorized call duration for single payment service calls in prisons and jails. The Commission notes that the 6% Alabama Utility Gross Receipts Tax is applicable to all collect calls originated from Alabama confinement facilities. The proposed pre-tax cap for both text-connect and Pay Now calls originating from prisons is

⁹⁷ With additional cost analysis, the Commission anticipates the maximum bill processing fee recommended herein will be decreased. See "Bill Processing Fee" in Section 8.00 (Authorized Ancillary Charges).

\$6.00 per call (\$3.00 usage charge and \$3.00 transaction fee).

- 6.39 The collect call rate cap for jails proposed herein is set at \$0.30/min during the first year of rate implementation, is decreased to \$0.28/min in year two, and to \$0.25/min beginning on the second anniversary of rate implementation. Based on the imputed 12-minute call duration and the maximum transaction fees, the recommended pre-tax cap for both text-connect and Pay Now calls from jails is \$6.60 per call in year one, \$6.36 in year two, and \$6.00 beginning with year three. Providers are authorized to add the applicable 6% Alabama Utility Gross Receipts Tax to the maximum pre-tax charge and quote the resulting after tax charge for single payment services. Should the Commission subsequently revise the maximum ICS collect call rates and/or its maximum transaction fees associated therewith, the maximum pre-tax charge for single payment service calls shall be adjusted accordingly.
- 6.40 Because the customer is paying for 12-minutes usage regardless of actual call duration, ICS providers will ensure that both the purchased minutes and associated revenues for single payment calls are reported for cost study purposes and in any reporting requirements mandated by the Commission and the FCC. The Commission shall consider provider requests for a waiver of the capped single payment charge. Waiver requests shall include:
1. Detailed justification from the ICS provider as to why the provider is unable to meet the Commission's cap on the charge for the applicable single payment service.
 2. Identification of the third-party vendor(s) used for text-connect and/or Pay Now service along with the vendor(s) charges to the ICS provider.
 3. Identification of any corporate affiliation between the ICS provider, or the provider's parent company, and the provider's third-party vendor(s) for the single payment service.
 4. Identification of any patents held by the ICS Provider or their parent company for services provided by the third-party vendor(s) supporting the single payment service.
 5. A copy of the contract(s) between the ICS provider and third-party vendor(s) for the single payment service(s).

6. Identification of alternative vendors considered and the competing vendors' price quotes.
7. For single payment service costs in excess of the third-party vendor charges, a detailed study supporting the additional costs. The study shall include accompanying data for the number of annual calls and annual revenue applicable to the single payment service as well as detailed analysis for apportionment of shared costs.⁹⁸
8. The requested single payment charge.

6.41 The most frequent complaint heard from inmates in some Alabama confinement facilities is the high number of calls disconnected due to suspected three-way call violations. The software used to identify such suspected violations is adjustable by the provider. At higher sensitivity levels, the software may misidentify background noise or the accidental engagement of a dial pad button during the conversation as dual-tone, multi-frequency signaling associated with call forwarding. Such calls are disconnected for suspected three-way call violations and the ICS provider does not authorize customer refunds under such circumstances. These premature call disconnections without refund are particularly costly to ICS customers under the current rate structure that includes a fixed per-call set up charge (operator surcharge) which must be paid again when the inmate re-dials the called party. The recommended "postalized" ICS rates will mitigate the impact of misidentified three-way call violations but single payment services will remain susceptible. ICS providers that offer single payment services do not allow refunds for premature call disconnections. Therefore, those calls prematurely disconnected then subsequently redialed require the recipient to pay the entire single payment charge again. Since single payment service calls are usually terminated to mobile phones, there is an inherent risk for a caller to accept such calls while driving or walking within commercial buildings where structural interference in some areas may interfere with cellular signals leading to disconnected calls. Another risk for premature disconnection is three-way call monitoring by the provider. The Commission is concerned about the potential for single payment service abuse resulting from manipulation of software used to monitor suspected three-way call violations. Therefore, the Commission intends to monitor premature

⁹⁸ Items # 5, 6, and 7 shall be submitted directly to the Commission's Utility Services Division and labeled "Proprietary".

disconnections associated with single payment services.

- 6.42 *The Order is, therefore, revised by eliminating the recommendation to prohibit text-connect single payment service. The Commission adopts NCIC's recommendation to allow but cap charges for text-connect service. The charge for "Pay Now" and similar single payment services, wherein inmate collect calls are billed to the call recipient's debit/credit card, are similarly capped. The charge to the end user for single payment services consists of a usage (calling minutes) element and a transaction fee element. The Commission imputes a 12-minute authorized call allowance for single payment service calls. Providers may offer longer authorized call durations, however, ICS provider charges to end users shall not exceed the Commission's cap on the charge for single payment calls. The usage element of the capped charge is computed by applying the Commission's maximum collect call rate for the type confinement facility served (prison or jail) to the imputed 12-minute call allowance. The transaction fee element of the end user charge shall not exceed the Commission's maximum bill processing fee for text-connect service or the payment processing fee for Pay Now service as provided in Section 8.00 of this Order. The combined usage and transaction fee elements constitute the pre-tax maximum charge for both text-collect and Pay Now service. The provider is authorized to apply the 6% Alabama Utility Gross Receipts Tax to the pre-tax charge for purposes of establishing the maximum after tax charge for single payment service. ICS providers may request a waiver of the Commission's maximum charge for single payment services subject to the provisions for requesting the waiver as referenced herein. The Commission shall monitor single payment call durations for potential abuse via premature disconnections.*
- 6.43 *ICS providers shall list in their tariff the single payment services offered, the terms and conditions as well as the charge for the service(s), the underlying provider(s) of the service(s), and the webpage and/or other contact information associated with the charge on the call recipient's mobile phone bill and/or credit card statement. Upon request, ICS providers shall submit to the Commission scripts of the IVR message(s)*

used for single payment services. ICS providers shall ensure that the charge for single payment service on the call recipient's mobile phone bill and/or credit card statement identifies the ICS provider that serves the confinement facility from which the single payment collect call originated. Any website associated with the charge on the call recipient's billing statement shall identify the ICS provider that serves the confinement facility from which the single payment collect call originated and include a prominently displayed link to the ICS provider's webpage. ICS providers shall be proactive in informing single pay service call recipients about the prepaid collect services available from the provider and the procedures for establishing a prepaid collect ICS account.

6.44 Restrictions on ICS Resale

Confinement facilities and/or inmate canteen/trust fund operators order blocks of numbered cards from ICS providers and resell the cards to inmates for purposes of providing debit service, primarily at small facilities that lack the Jail Management System, inmate banking system, and commissary account interfaces necessary for funding and tracking inmate debit service. The cards, made of paper, are typically sold in face value increments of \$10 and are discounted to resellers. The Order⁹⁹ requires that the amount paid by inmates for the card shall provide inmates the equivalent ICS purchasing power in accordance with the provider's tariffed debit calling rates. In comments, CenturyLink contends the Commission may not have jurisdiction to prevent confinement facilities and canteen/trust fund operators from marking up the face value of prepaid ICS cards:

EPSI does not mark-up its prepaid services and, therefore, does not object to this requirement as it applies to ICS providers. However, EPSI notes that inmate facilities themselves sometimes impose markups, which are outside of EPSI's control. EPSI is unsure whether the Commission has jurisdiction to impose these prohibitions on inmate facilities, since they are not under the Commission's regulatory jurisdiction.¹⁰⁰

⁹⁹ Order, Section III L, page 24.

¹⁰⁰ CenturyLink comments, dated December 6, 2013, page 11.